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09/897,008	07/02/2001	Melissa Rockenbach	ROC01-002P	1128

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 05/21/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/897008

Applicant(s)

ROCKENBACH

Examiner

S. WEINSTEIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-20 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-20 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
  - ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2
- ☐ Interview Summary, PTO-413
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Ref. N (Transeidou Honpo, Jp. 61-35748).

In regard to claim 1, Ref. N. discloses a confectionary display device comprising an edible first member (e.g., # 1) and at least an edible indicia (e.g., # 2) that is received by said first member and maintained thereon in a secure manner (e.g., # 3) such that the indicia is viewable by an intended recipient. This is all claim 1 positively recites. Note that the star (and small heart in Ref. N are construed to be indicia by applicants own definition found on page 7 of the specification wherein applicant defines indicia as letters, numerals, characters, caricatures, symbols, signs and emblems. In regard to claims 2 and 3, the molded base chocolate (# 1) of Ref. N is considered to be both rigid and planar. In regard to claim 14, Ref. N discloses a confectionary device capable of relaying a message comprising a first edible member having a substantially rigid nature, a plurality of edible indicia (e.g., # 2 and # 20) being received on the first member and retained thereon in a secure member such that the indicia is viewable by an intended recipient and "whereby" a user "may" place (i.e., would be capable of placing) any desired indicia onto the first member to relay a desired message. This is all claim 14 positively recites.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ref. N in view of Schroeder (4,560,562), Newsteder (4,778,683), and Swiss Colony Christmas Gift Book (1982).

Claim 4 recites a series of different shapes for the first member (i.e., the member that receives the indicia). The particular shape of this member whether rectangular, circular, etc. is seen to have been an obvious matter of design. To modify the shape of the first member of Ref. N, which is after all a molded product, which could assume any shape one wanted, would therefore have been obvious; especially since the art taken as a whole as evidenced by Schroeder, Newsteder and Swiss Colony teach various shapes for an edible display/message element including rectangular. Claim 8 recites that the first member is in the shape of a tablet. It is not clear what shape that is since pharmaceutical tablets can be square, round, five sided, etc. In any case, as noted above, since the products being manipulated are moldable and intended to be molded, the particular shape one chooses to impart to the product is seen to have been an obvious matter of choice and/or design.

Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ref. N in view of applicant's admission of the prior art.

Claim 5 recites that the first member comprises an outer shell and an inner substance and claim 6 recites that the outer shell is hard candy. Ref. N, in the abstract, discloses that the first member can be chocolate. No additional details are given in the abstract. Applicant is obviously not the first to provide a hard candy shell and an inner substance. As evidenced by applicant's admission of the prior art, found in the specification, Candies having hard candy shells and an inner substance already, exist such as in the M&M type candies. To modify Ref. N and substitute one conventional candy for another conventional candy, if indeed, such is not already disclosed in Ref. N would have been an obvious matter of choice and/or personal taste. In regard to claim 7, as acknowledged by applicant's admission of the prior art, composite candies with chocolate as the inner substance are, of course, notoriously old.

Claims 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 8 above, and further in view of Parents' Magazine (v.67, n. 9, p. 161, 9/92-Ref. W<sup>2</sup>), Wilton (1996 yearbook, p. 124-Ref U<sup>3</sup>), Int'l, New Product Report (15, 7/22/94, p. 11-Ref. W<sup>3</sup>), Int'l, New Product Report (22, 11/16/90, p. 5, 7-Ref. X<sup>3</sup>), CMM Confection any Manufacture & Mkt (27, 11, 11/90, p.16-Ref. U<sup>4</sup>), Nation's Business, v. 72, p. 49, 10/84-Ref. U), Gorman's New Product News, v. 28, n. 1, p. 18-Ref. W), Int'l Product Alert (v. 17, n. 15, 8/7/2000-Ref. U<sup>2</sup>), Int'l Product Alert (12/5/90-Ref.. V<sup>2</sup>) and Palm Beach Post (12/21/95, p. 1 FN-Ref. X<sup>2</sup>).

Claim 9 recites the generic type of composition of the indicia. Applicant is not the inventor of the candy compositions. As evidenced by References W<sup>2</sup>, U<sup>3</sup>, W<sup>3</sup>, X<sup>3</sup>, U<sup>4</sup>, U, W, U<sup>2</sup>, V<sup>2</sup>, X<sup>2</sup> and even Schroeder, it is notoriously old to employ confectionary

compositions for making edible indicia including jelly gum or gummi confectionary (e.g., Ref. U). To modify Ref. N and substitute, if necessary, one conventional confectionary for another conventional confectionary for its art recognized and applicant's intended function as indicia (due to its shape) would therefore have been obvious. In regard to claims 10-12, the art taken as a whole teaches indicia which can become sticky due to moisture (e.g., marshmallow) or wherein an edible tacky substance has been used as an edible adhesive to attach indicia to the first member. Note, e.g., that Ref. N uses chocolate as an edible adhesive to bond indicia to a first member whereas Ref. W<sup>2</sup> employs frosting as an edible adhesive to adhere candy letters from a kit to an ice cream cone and Ref. X<sup>2</sup> discloses edible adhesives for attaching candies wherein the adhesives can be canned cake icing, royal icing and boiled sugar meringue. In regard to claim 18, the particular adhesive one chooses to employ is seen to have been an obvious.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ref. N in view of Schroeder ('562), Newsteder ('683) and Swiss Colony, further in view of applicant's admission of the prior art for the reasons given above. That is, the art taken as a whole teaches it would have been obvious to modify Ref. N and employ a "tablet" shape and a first member that includes a hard candy material.

Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 15 above, and further in view of the references as applied in the rejection of claims 9-13 for the reasons given therein. The recitations of tablet shape, adhesive, composition of the indicia have been treated above.

Application/Control Number: 09/897,008  
Art Unit: 1761

Page 6

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ref. N as applied to claim 14 above, and further in view of the references as applied in the rejection of claims 9-13 for the reasons given therein.

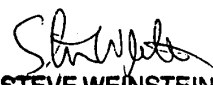
The remainder of the references cited on the USPTO 892 forms are cited as pertinent art.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is 703-308-0650. The examiner can generally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-0661.

S. Weinstein/mn  
May 6, 2003

  
**STEVE WEINSTEIN**  
**PRIMARY EXAMINER**  
5/9/03 1761